

ASSEMBLY BILL

No. 198

Introduced by Assembly Member Wieckowski

January 29, 2013

An act to amend Sections 703.140, 704.010, 704.100, 704.113, 704.720, and 704.960 of, and to add Section 704.111 to, the Code of Civil Procedure, relating to exempt property.

LEGISLATIVE COUNSEL'S DIGEST

AB 198, as introduced, Wieckowski. Exempt property.

Existing law identifies various types of property of a judgment debtor that are exempt from enforcement of a money judgment. Existing law provides that property described in statute as exempt may be claimed within the time and in the manner prescribed in the applicable enforcement procedure, and property described in statute as exempt without making a claim is not subject to any procedure for enforcement of a money judgment. These general exemptions are available to a debtor in a federal bankruptcy case, whether a money judgment is being enforced by execution sale or other procedure, unless the debtor elects certain alternative exemptions.

(1) Existing law provides that the benefits from a matured life insurance policy, including an endowment or annuity policy, are exempt to the extent reasonably necessary for the support of the debtor and the spouse and dependents of the debtor.

This bill would expand this exemption to include an amount of benefits up to \$300,000 plus any amount that is reasonably necessary for the support, as defined, of the debtor and his or her spouse and dependents. The bill also would add an alternative exemption for the debtor's interest in these expanded benefits.

(2) Existing law includes an alternative exemption for any unmaturing life insurance contract owned by the debtor, other than a credit life insurance contract.

This bill would clarify that this alternative exemption applies regardless of the age or physical health of the debtor.

(3) Existing law provides that vacation credits, as defined, are exempt from enforcement of a money judgment without making a claim.

This bill would delete the definition of “vacation credits” set forth in these provisions and expand this general exemption to also include accrued or unused vacation pay. The bill also would add an alternative exemption for the debtor’s right to receive these expanded assets.

(4) Existing law provides that up to \$2,300 of any combination of aggregate equity in motor vehicles, the proceeds of an execution sale of a motor vehicle, and the proceeds of insurance or other indemnification for the loss, damage, or destruction of a motor vehicle, is exempt. Existing law includes an alternative exemption for up to \$4,800 of the debtor’s interest in one or more motor vehicles.

This bill would increase the amount of the general exemption for motor vehicle equity to \$4,800, matching the maximum amount of the alternative exemption for motor vehicles, and make conforming changes.

(5) Existing law includes an alternative exemption for the debtor’s right to receive alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

This bill would provide that these assets are exempt, thereby adding a general exemption matching the existing alternative exemption.

(6) Existing law provides that the proceeds of sale or of insurance or other indemnification for damage or destruction of a homestead, the proceeds received as compensation for a homestead acquired for public use, or the proceeds from a voluntary sale of a declared homestead are exempt in the amount of the homestead exemption provided in a specified statute for a period of six months after the time the proceeds are actually received by the judgment debtor, except as provided.

This bill would delete the six-month limitation on these exemptions, thereby making these proceeds exempt indefinitely, and make conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 703.140 of the Code of Civil Procedure is amended to read:

703.140. (a) In a case under Title 11 of the United States Code, all of the exemptions provided by this chapter, including the homestead exemption, other than the provisions of subdivision (b) are applicable regardless of whether there is a money judgment against the debtor or whether a money judgment is being enforced by execution sale or any other procedure, but the exemptions provided by subdivision (b) may be elected in lieu of all other exemptions provided by this chapter, as follows:

(1) If a husband and wife are joined in the petition, they jointly may elect to utilize the applicable exemption provisions of this chapter other than the provisions of subdivision (b), or to utilize the applicable exemptions set forth in subdivision (b), but not both.

(2) If the petition is filed individually, and not jointly, for a husband or a wife, the exemptions provided by this chapter other than the provisions of subdivision (b) are applicable, except that, if both the husband and the wife effectively waive in writing the right to claim, during the period the case commenced by filing the petition is pending, the exemptions provided by the applicable exemption provisions of this chapter, other than subdivision (b), in any case commenced by filing a petition for either of them under Title 11 of the United States Code, then they may elect to instead utilize the applicable exemptions set forth in subdivision (b).

(3) If the petition is filed for an unmarried person, that person may elect to utilize the applicable exemption provisions of this chapter other than subdivision (b), or to utilize the applicable exemptions set forth in subdivision (b), but not both.

(b) The following exemptions may be elected as provided in subdivision (a):

(1) The debtor's aggregate interest, not to exceed twenty-four thousand sixty dollars (\$24,060) in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence.

(2) The debtor's interest, not to exceed four thousand eight hundred dollars (\$4,800) in value, in one or more motor vehicles.

1 (3) The debtor's interest, not to exceed six hundred dollars
2 (\$600) in value in any particular item, in household furnishings,
3 household goods, wearing apparel, appliances, books, animals,
4 crops, or musical instruments, that are held primarily for the
5 personal, family, or household use of the debtor or a dependent of
6 the debtor.

7 (4) The debtor's aggregate interest, not to exceed one thousand
8 four hundred twenty-five dollars (\$1,425) in value, in jewelry held
9 primarily for the personal, family, or household use of the debtor
10 or a dependent of the debtor.

11 (5) The debtor's aggregate interest, not to exceed in value one
12 thousand two hundred eighty dollars (\$1,280) plus any unused
13 amount of the exemption provided under paragraph (1), in any
14 property.

15 (6) The debtor's aggregate interest, not to exceed seven thousand
16 one hundred seventy-five dollars (\$7,175) in value, in any
17 implements, professional books, or tools of the trade of the debtor
18 or the trade of a dependent of the debtor.

19 (7) Any unmatured life insurance contract owned by the debtor,
20 other than a credit life insurance contract, *regardless of the debtor's*
21 *age or physical health.*

22 (8) The debtor's aggregate interest, not to exceed in value twelve
23 thousand eight hundred sixty dollars (\$12,860), in any accrued
24 dividend or interest under, or loan value of, any unmatured life
25 insurance contract owned by the debtor under which the insured
26 is the debtor or an individual of whom the debtor is a dependent.

27 (9) *The debtor's interest, not to exceed three hundred thousand*
28 *dollars (\$300,000) plus any amount that is reasonably necessary*
29 *for the support of the judgment debtor and his or her spouse and*
30 *dependents, in benefits from a matured life insurance policy,*
31 *including an endowment or annuity policy. As used in this*
32 *paragraph, "reasonably necessary for the support" means required*
33 *to meet present and future needs, as determined by the court after*
34 *consideration of the debtor's responsibilities and all the present*
35 *and anticipated property and income of the debtor, including*
36 *exempt property.*

37 ~~(9)~~

38 (10) Professionally prescribed health aids for the debtor or a
39 dependent of the debtor.

40 ~~(10)~~

1 (11) The debtor's right to receive any of the following:

2 (A) A social security benefit, unemployment compensation, or
3 a local public assistance benefit.

4 (B) A veterans' benefit.

5 (C) A disability, illness, or unemployment benefit.

6 (D) Alimony, support, or separate maintenance, to the extent
7 reasonably necessary for the support of the debtor and any
8 dependent of the debtor.

9 (E) A payment under a stock bonus, pension, profit-sharing,
10 annuity, or similar plan or contract on account of illness, disability,
11 death, age, or length of service, to the extent reasonably necessary
12 for the support of the debtor and any dependent of the debtor,
13 unless all of the following apply:

14 (i) That plan or contract was established by or under the auspices
15 of an insider that employed the debtor at the time the debtor's
16 rights under the plan or contract arose.

17 (ii) The payment is on account of age or length of service.

18 (iii) That plan or contract does not qualify under Section 401(a),
19 403(a), 403(b), 408, or 408A of the Internal Revenue Code of
20 1986.

21 (F) *Vacation credits or accrued or unused vacation pay.*

22 ~~(11)–~~

23 (12) The debtor's right to receive, or property that is traceable
24 to, any of the following:

25 (A) An award under a crime victim's reparation law.

26 (B) A payment on account of the wrongful death of an individual
27 of whom the debtor was a dependent, to the extent reasonably
28 necessary for the support of the debtor and any dependent of the
29 debtor.

30 (C) A payment under a life insurance contract that insured the
31 life of an individual of whom the debtor was a dependent on the
32 date of that individual's death, to the extent reasonably necessary
33 for the support of the debtor and any dependent of the debtor.

34 (D) A payment, not to exceed twenty-four thousand sixty dollars
35 (\$24,060), on account of personal bodily injury of the debtor or
36 an individual of whom the debtor is a dependent.

37 (E) A payment in compensation of loss of future earnings of
38 the debtor or an individual of whom the debtor is or was a
39 dependent, to the extent reasonably necessary for the support of
40 the debtor and any dependent of the debtor.

SEC. 2. Section 704.010 of the Code of Civil Procedure is amended to read:

704.010. (a) Any combination of the following is exempt in the amount of ~~two~~ *four* thousand ~~three~~ *eight* hundred dollars (\$2,300) (\$4,800):

- (1) The aggregate equity in motor vehicles.
- (2) The proceeds of an execution sale of a motor vehicle.
- (3) The proceeds of insurance or other indemnification for the loss, damage, or destruction of a motor vehicle.

(b) Proceeds exempt under subdivision (a) are exempt for a period of 90 days after the time the proceeds are actually received by the judgment debtor.

(c) For the purpose of determining the equity, the fair market value of a motor vehicle shall be determined by reference to used car price guides customarily used by California automobile dealers unless the motor vehicle is not listed in such price guides.

(d) If the judgment debtor has only one motor vehicle and it is sold at an execution sale, the proceeds of the execution sale are exempt in the amount of ~~two~~ *four* thousand ~~three~~ *eight* hundred dollars (~~\$2,300~~) (\$4,800) without making a claim. The levying officer shall consult and may rely upon the records of the Department of Motor Vehicles in determining whether the judgment debtor has only one motor vehicle. In the case covered by this subdivision, the exemption provided by subdivision (a) is not available.

SEC. 3. Section 704.100 of the Code of Civil Procedure is amended to read:

704.100. (a) ~~Unmatured~~ *An unmatured* life insurance policies ~~(including policy, including an endowment and or annuity policies), but not policy, excluding the loan value of such policies, are the policy,~~ is exempt without making a claim.

(b) The aggregate loan value of *an* unmatured life insurance policies ~~(including policy, including an endowment and or annuity policies)~~ *policy*, is subject to the enforcement of a money judgment but is exempt in the amount of nine thousand seven hundred dollars (\$9,700). If the judgment debtor is married, each spouse is entitled to a separate exemption under this subdivision, and the exemptions of the spouses may be combined, regardless of whether the ~~policies belong~~ *policy belongs* to either or both spouses and regardless of whether the spouse of the judgment debtor is also a judgment

debtor under the judgment. The exemption provided by this subdivision shall be first applied to policies other than the policy before the court and then, if the exemption is not exhausted, to the policy before the court.

(c) Benefits from a matured life insurance policies (including policy, including an endowment and or annuity policies) policy, are exempt to the extent in an amount not to exceed three hundred thousand dollars (\$300,000) plus any amount reasonably necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor. As used in this paragraph, “reasonably necessary for the support” means an amount required to meet present and future needs, as determined by the court after consideration of the debtor’s responsibilities and all the present and anticipated property and income of the debtor, including exempt property.

SEC. 4. Section 704.111 is added to the Code of Civil Procedure, to read:

704.111. Alimony, support, and separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, are exempt.

SEC. 5. Section 704.113 of the Code of Civil Procedure is amended to read:

~~704.113. (a) As used in this section, “vacation credits” means vacation credits accumulated by a state employee pursuant to Section 18050 of the Government Code or by any other public employee pursuant to any law for the accumulation of vacation credits applicable to the employee.~~

~~(b)~~

704.113. (a) All vacation credits are or accrued or unused vacation pay is exempt without making a claim.

~~(c)~~

(b) Amounts paid periodically or as a lump sum representing vacation credits are subject to any earnings withholding order served under Chapter 5 (commencing with Section 706.010) or any earnings assignment order for support as defined in Section 706.011 and are exempt to the same extent as earnings of a judgment debtor.

SEC. 6. Section 704.720 of the Code of Civil Procedure is amended to read:

1 704.720. (a) A homestead is exempt from sale under this
2 division to the extent provided in Section 704.800.

3 (b) If a homestead is sold under this division or is damaged or
4 destroyed or is acquired for public use, the proceeds of sale or of
5 insurance or other indemnification for damage or destruction of
6 the homestead or the proceeds received as compensation for a
7 homestead acquired for public use are exempt in the amount of
8 the homestead exemption provided in Section 704.730. ~~The~~
9 ~~proceeds are exempt for a period of six months after the time the~~
10 ~~proceeds are actually received by the judgment debtor, except that,~~
11 ~~if a homestead exemption is applied to other property of the~~
12 ~~judgment debtor or the judgment debtor's spouse during that~~
13 ~~period, the proceeds thereafter are not exempt.~~

14 (c) If the judgment debtor and spouse of the judgment debtor
15 reside in separate homesteads, only the homestead of one of the
16 spouses is exempt and only the proceeds of the exempt homestead
17 are exempt.

18 (d) If a judgment debtor is not currently residing in the
19 homestead, but his or her separated or former spouse continues to
20 reside in or exercise control over possession of the homestead, that
21 judgment debtor continues to be entitled to an exemption under
22 this article until entry of judgment or other legally enforceable
23 agreement dividing the community property between the judgment
24 debtor and the separated or former spouse, or until a later time
25 period as specified by court order. Nothing in this subdivision shall
26 entitle the judgment debtor to more than one exempt homestead.
27 Notwithstanding subdivision (d) of Section 704.710, for purposes
28 of this article, "spouse" may include a separated or former spouse
29 consistent with this subdivision.

30 SEC. 7. Section 704.960 of the Code of Civil Procedure is
31 amended to read:

32 704.960. ~~(a)–If a declared homestead is voluntarily sold, the~~
33 ~~proceeds of sale are exempt in the amount provided by Section~~
34 ~~704.730 for a period of six months after the date of sale.~~

35 ~~(b)–If the proceeds of a declared homestead are invested in a~~
36 ~~new dwelling within six months after the date of a voluntary sale~~
37 ~~or within six months after proceeds of an execution sale or of~~
38 ~~insurance or other indemnification for damage or destruction are~~
39 ~~received, the new dwelling may be selected as a declared~~
40 ~~homestead by recording a homestead declaration within the~~

1 applicable six-month period. In such case, the homestead
2 declaration has the same effect as if it had been recorded at the
3 time the prior homestead declaration was recorded.

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